

USERRA ENSURES RIGHTS, DEFINES OBLIGATIONS FOR RESERVISTS

As a result of the nation's increased vigilance against terrorism and the war in Iraq, tens of thousands of reservists have been and are being called to active military duty. Most will eventually return to civilian life and their jobs. Employees who have been called to serve and the businesses that employ these reservists have specific obligations and rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Signed into law ten years ago by President Clinton, USERRA was designed to give employees who take a leave of absence for active military service certain statutory rights—not only to reemployment, but to specific coverage for retirement and wellness benefits.

The purpose of the Uniform Services Employment and Reemployment Rights Act (USERRA) is to protect the civilian jobs of those who choose to serve in the armed forces. Specifically, USERRA is intended to minimize the disadvantages to civilian employees who serve in this country's uniformed services. Further, the law is intended to encourage people to participate in non-career uniformed service while maintaining a balance with the needs of private and public employers.

Under USERRA, individuals may be absent from work for military duty for up to **five** years during which time their employers are required to retain their positions. Upon return, the employees are entitled to occupy the jobs they would have attained had it not been for the military service absence. The returning employees are entitled to the same seniority, status and compensation level they would have attained had they been continuously employed. USERRA also requires that employers make reasonable efforts (such as training or retraining) to enable returning service members to refresh or upgrade their skills to help them enter reemployment.

"USERRA is particularly important now as it provides reemployment rights to those men and women called from civilian jobs to serve in the nation's defense. In addition, the law prohibits employer discrimination against veterans and reservists because of their military service or obligations."

*- From a statement by Frederico Juarbe, Jr.,
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HISTORIAL PERSPECTIVE

USERRA's roots go back to 1940, when the Congress was considering the nation's first peacetime draft. At the same time, the lawmakers resolved to provide newly inducted service members right to return to their pre-service employers. To achieve this, what came to be popularly known as the Veterans' Reemployment Rights (VRR) law was enacted.

By the early 1990s, the VRR law had become a complex and often difficult patchwork of legislative amendments and court decisions. It was severely tested by the mobilization and subsequent return of some 265,000 Guard and Reserve members for Operation Desert Shield/Desert Storm in 1991. USERRA revised and restructured the VRR law, continuing most of its provisions while clarifying many provisions. It also made some substantive changes.

These provisions apply to all employers, no matter how large or small. Basically, employers are required to:

- Grant military leave to employees to perform military service. Employees must give advance notice "unless precluded by military necessity."
- Allow the use of accrued leave if requested by an employee. Employers are not required to pay employees on military leave.
- Continue health benefits for at least 30 days under the same terms as if the employee were still on staff. After 30 days, the employer must give the employee the COBRA-like option to pay for continuing health benefits for up to 18 months. The employer can charge the employee up to 102 percent of the premium cost.
- Restore health coverage in full with no waiting periods and no penalty for non-service-related preexisting conditions when the member returns to work.
- Allow paid time off to accrue if the employer's policies for workers on other kinds of leave (FMLA, etc.) permit them to continue accruing. Otherwise, employers are not required to allow accrual of vacation and sick days while employees are on military leave.
- Reinstate non-seniority based benefits.

- Reemploy military members after completion of their duty. If any of these employees were in line to receive promotions based on seniority, and if they are qualified or can be made so, then those employees are entitled to the jobs they would have had if they had never left.
- Continue pension plans. A reemployed person "must be treated as not having incurred a break in service with the employer maintaining a pension plan." Employers are, therefore, liable for their contributions to a plan.

The reinstatement provisions and benefit issues, which are only generally summarized in this article, are

very complicated and could be significant sources of liability to unwary employers. Human resources departments should periodically review their military leave policies to ensure that they comply with the law.

More information regarding USERRA can be found by contacting the U.S. Department of Labor/VETS, Idaho at (208) 332-8947 or at: www.dol.gov/vets/#userra.

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Remembering... Veteran's Day November 11, 2004



FYI Table 1: Idaho Veteran Population, 2003 Sex by Age, by Armed Forces Status, by Veteran Status for the Population 18 Years and Over. (Universe: Population 18 Years and Over)

Idaho	Estimate	Lower Bound	Upper Bound
Total:	963,572	959,495	967,649
Male:	471,591	468,552	474,630
18 to 64 years:	404,166	401,332	407,000
In Armed Forces	2,247	765	3,729
Civilian:	401,919	398,964	404,874
Veteran	72,047	65,822	78,272
Nonveteran	329,872	323,279	336,465
65 years and over:	67,425	66,187	68,663
In Armed Forces	-	-	385
Civilian:	67,425	66,187	68,663
Veteran	43,297	39,910	46,684
Nonveteran	24,128	20,941	27,315
Female:	491,981	488,433	495,529
18 to 64 years:	411,822	408,443	415,201
In Armed Forces	325	-	705
Civilian:	411,497	408,041	414,953
Veteran	5,621	4,004	7,238
Nonveteran	405,876	402,032	409,720
65 years and over:	80,159	78,893	81,425
In Armed Forces	-	-	385
Civilian:	80,159	78,893	81,425
Veteran	1,860	981	2,739
Nonveteran	78,299	76,605	79,993

Because November is the month to honor veterans, Tables 1 and 2 provide a snapshot view of some characteristics of Idaho's veterans.

FYI Table 2: Idaho Veterans by Service Theater

Idaho	Estimate	Lower Bound	Upper Bound	Percent of Est.
TOTAL	122,825	114,206	131,444	
Gulf War, no Vietnam Era	18,494	14,502	22,486	15.06%
Gulf War and Vietnam Era	1,869	995	2,743	1.52%
Vietnam Era, no Korean War, no World War II	37,805	33,047	42,563	30.78%
Vietnam Era and Korean War, no World War II	1,281	586	1,976	1.04%
Vietnam Era and Korean War and World War II	335	0	686	0.27%
Korean War, no Vietnam, no World War II	15,095	12,784	17,406	12.29%
Korean War and World War II, no Vietnam Era	1,419	480	2,358	1.16%
World War II, no Korean War, no Vietnam Era	19,850	17,434	22,266	16.16%
Post-Vietnam Era only	12,618	10,133	15,103	10.27%
Between Vietnam and Korean War only	13,366	10,893	15,839	10.88%
Between Korean War and World War II only	565	177	953	0.46%
Pre-World War II only	128	0	375	0.10%